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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/508,977	03/17/2000	THOMAS KIY	1997/F-237	4908

23416 7590 03/13/2002

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EXAMINER

MARX, IRENE

ART UNIT PAPER NUMBER

1651

DATE MAILED: 03/13/2002

10

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/508,977

Applicant(s)
Kiy

Examiner
Irene Marx

Art Unit
1651



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Jan 2, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-27 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- *See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 20) ☐ Other:

The amendment filed 1/2/02 is acknowledged. Claims 15-27 are being considered on the merits.

In keeping with scientific custom, the names of genera and species of microorganisms should be underlined or italicized throughout the specification and claims.

To clarify the invention, the "taxonomic groups" in claim 16 should be clarified regarding intended ciliate groupings and/or genera therein, particularly with respect to wild-type strains, mutants and recombinants.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 15-27 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 15 is vague, indefinite and confusing in the phrase "a volume of complex axenic culture medium". Is this an aqueous medium? The claim 15 is further confusing in the recitation of "harvesting ... at an extraction rate of about 0.1 to about 12 volumes per day". The nature of these "volumes" is uncertain.

Claim 15 is further confusing in the recitation of "about an equivalent amount". The amount intended is uncertain.

Claim 15 is vague, indefinite and confusing in that the claim preamble and the harvesting step are inconsistent. The claim preamble is directed to the production of "a biogenous substance from ciliates", while the product harvested is "biomass". From applicant's arguments, for example, at page 7, last paragraph, it is apparent that applicant's invention is directed to the production of ciliate biomass. The claims should be amended to reflect the invention. Moreover, as noted previously, the phrase "biogenous substance" renders the claim confusing. The product(s) intended are uncertain.

Claim 26 is confusing in the phrase "the cells contained in the harvested biomass are separated...". Are the cells separated from the biomass?

In claim 23 the phrase "preferably" renders the claim indefinite because it is unclear whether the limitation(s) following the phrase are part of the claimed invention or not, and the resulting claim does not clearly set forth the metes and bounds of the patent protection desired.

Claim 27 is grammatically incorrect in the phrase "one or more substance". Also the term "selected from" is missing before "from the group consisting of".

Claim 25 is objected to under 37 CFR 1.75(c) as being in improper form because a multiple dependent claim must depend on claims in the alternative. See MPEP § 608.01(n).

The claims 15-27 would be allowable upon resolution of all 35 U.S.C § 112 issues. The claims are free of the art of record because the process steps used in the prior art for the cultivation of ciliates differ from those claimed herein in that in the instant case the biomass is harvested continuously from the complex axenic medium. There would have been no motivation for one of ordinary skill in the art to modify the processes of the prior art relating to the cultivation of ciliates in the manner claimed.

No claim is allowed.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Irene Marx whose telephone number is (703) 308-2922. The examiner can normally be reached on Monday through Friday from 6:30 AM to 3:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Wityshyn, can be reached on (703) 308-4743. The appropriate fax phone

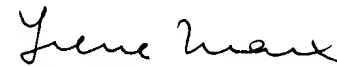
Serial No. 09/508977

-4-

Art Unit 1651

number for the organization where this application or proceeding is assigned is (703) 305-3592, (703) 308-4242 and (703) 305-3014.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service whose telephone number is (703) 308-0198 or the receptionist whose telephone number is (703) 308-1235.



Irene Marx

Primary Examiner

Art Unit 1651